IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19277 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUMANBEN W/O RAJAN RAMDAS SING - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MAHENDRA K PATEL for Petitioner(s) : 1,MR PINAKIN B RAVAL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 22/11/2005

ORAL JUDGMENT

1. Sumanben w/o Rajan Ramdas Sing-petitioner has filed this petition of habeas corpus praying for

issue of appropriate writ or order to quash and set aside the order of detention dated 17.07.2005 passed by Commissioner of Police, Surat city-detaining authority under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'PASA Act')which is illegal, null and void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition was filed on 15th September, 2005 and and my learned brother Hon'ble Mr. Justice A.S. Dave issued **RULE** on 23.09.2005 which was made returnable after four weeks and that is why this matter has been placed before this Court.

2. Heard, Mr. Mahendra K. Patel, learned Advocate for the petitioner and Mr. Gohil, learned A.G.P. in this behalf.

3. Learned Advocate for the petitioner invited my attention to the order of detention dated 17.07.2005 passed by the Commissioner of Police, Surat city-detaining authority in this behalf by which petitioner was detained on 17.07.2005 and sent to Sabarmati Centra Jail, Ahmedabad.

4. Learned Advocate for the petitioner has also invited my attention to the grounds of detention supplied by the detaining authority. As the ground of detention one-solitary offence has been shown as registered against the petitioner-detenu being C.R. No.378 of 2005 at Udhna Police Station punishable under Section 66(1)B, 65A,E and 81 of the Bombay Prohibition Act. In connection with the said offence the authority confiscated 341/- bottles of country liquor valued at Rs.10,230/-, one three-wheel tempo and one mobile phone in all valued at Rs.72,730/-. In connection with that offence she was detained on 22.06.2005 and she was released on bail on 04.07.2005. Learned Advocate for the petitioner further stated that on the basis of that solitary offence registered against the petitioner-detenu she was termed as 'Bootlegger' within the meaning of Section 2(b)of the PASA Act. Further, it was also stated in the order of detention that ordinary law will not be helpful to immediately prevent the petitioner from acting in prejudicial to the maintenance of 'public order'. It was also stated that after duly arriving at subjective satisfaction, detaining authority has passed the order of detention.

5. It was further submitted that the detention

order has been passed on the ground that detenu is a 'Bootlegger' and her activities have affected adversely maintenance of 'public order'. However, on bare perusal of the materials produced along with the order of detention it cannot be said that the activities of detenu have affected adversely maintenance of 'public order'. Assuming without admitting that the activities of the detenu may affect the 'law and order' situation. It was further submitted that one offence registered against the detenu do not indicate anything to support the disturbance of 'public order'.

6. Learned Advocate for the petitioner has placed reliance on the judgment of the apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491 and Darpan Kumar Sharma alias Dharban Kumar Sharma Vs. State of Tamil Nadu reported in AIR 2003 SC 971. Learned Advocate for the petitioner has also relied on Division Bench judgment of this Court in L.P.A. No.223 of 2000 (Coram: M.R. Calla & R.R. Tripathi,J.J.) decided on 22nd August, 2000 in the

case of Ashok Makwana Vs. State of Gujarat. He has also relied on the recent judgment of this Court in S.C.A. No.20420 of 2005 decided on 15.11.2005 (Coram: K.M. Mehta) in the case of Rajubhai Pratapbhai Panpatil Vs. Commissioner of Police, Surat City. As regards police custody he has placed reliance on 2003 (1) GLR 2769 in this behalf.

7. In view of the judgment of apex Court in the case of Piyush Kantilal Mehta(Supra) and Darpan Kumar Sharma (Supra), and also, Division Bench judgment of this Court in the case of Ashok Makwana(Supra), I am of the view that mere indulgence in bootlegging activity of the detenu-petitioner may not amount to breach of any 'public order', at the most it may amount to prejudicial to 'law and order' situation. Hence, petition is allowed and the order of detention dated 17.07.2005 passed by Commissioner of Police, Ahmedabad city is hereby quashed and set aside. Detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K.M.MEHTA,J.)

Umesh/